

STEPHEN A. ZAPPALA, JR.  
DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY



# County of Allegheny

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OCTOBER 24, 2019  
FOR IMMEDIATE RELEASE

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## STATEMENT FROM DISTRICT ATTORNEY STEPHEN A. ZAPPALA JR. ON ACLU COMMENTS

Yet again, the A.C.L.U. misrepresents the bail processes in Allegheny County.

Some time ago, the A.C.L.U. was provided the attached position statement on bail. Additionally, I have attached a letter sent to the Chief Justice of the Pennsylvania Supreme Court dated August 16, 2018, outlining my concerns about bail and his response to that letter.

The District Attorney's office does not participate in the process when bail is set. The Bail Agency makes recommendations using a well-regarded and validated risk assessment tool. If the Magistrate does not follow the Bail Agency's recommendation, a Court of Common Pleas Judge hears the matter within 24-72 hours.

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## CHARGING/BAIL

### OVERVIEW ON CHARGING CRIMES IN ALLEGHENY COUNTY

#### I. HISTORICALLY

I immediately started to evaluate charging schemes and the discretion given historically to the police and to Magisterial District Judges.

##### ❖ Historical Schemes:

- For Pittsburgh – there is a centralized office for criminal matters – “City Court”.
- We staff that office to give advice
- If we disagreed as to charging, there was no mandate that the police have to follow our advice/position
- For the entire County;
  - ◆ If someone is charged – a preliminary hearing is typically held 3 to 10 days later.
  - ◆ An Assistant District Attorney will determine, based on the evidence, to charge or not to charge
  - ◆ To handle the preliminary hearing in other counties, prosecutors use the police agency that made the arrest.
  - ◆ The process reduced the approximately 50,000 criminal complaints (on average) to 16, 000 indictments (on average).
- Some of the problems:
  - ◆ Relatively minor crimes – the accused is subject to bail, and the accused can not make bail
  - ◆ Arresting in DUI’s – the person may be ARD eligible
    - 5,000 first-time DUI’s are reviewed and approximately 4,000 are entered into ARD
    - Unless someone is hurt – jail should not be a consideration
  - ◆ Serious crimes needed much better quality control
  - ◆ Ensure that the evidence supports the charges

#### II. CHANGES TO CHARGING SCHEMES

- Established an On-Call list to provide advice on a 24/7 basis. The format for the On-Call list is Attachment 1.
- In the time frame of 2004/2005, I lobbied the PA Supreme Court to amend Rules of Criminal Procedure 509 and 519
- Rule 509 was changed so Magisterial District Judges had to issue a summons on cases (Misdemeanor 2 or lower; Misdemeanor 1, if a DUI)

## "Changes" cont'd

- i. Rule 519 was changed so police who make "on view" arrests (no warrant) were:
  - a. Required to proceed by summons on M-2 or lower; M-1, (if DUI) unless there is an immediate threat and if it is reasonable to believe the person will not appear.
- ii. "Summons" there is temporary detention;
  - a. No arrest, bail is not immediately considered, and
  - b. The preliminary hearing is no sooner than 20 days from the incident.
  - c. Allows the defense bar lead time to request diversion
    - i. Drug Court established in 1999
    - ii. Pride Court in 2000
    - iii. Mental Health Court established in 2001
    - iv. DUI Court established in 2005
    - v. Veterans Court in 2007
    - vi. There are six other diversionary programs currently in place
  - d. Gives defense time to review
    - i. To resolve short of prosecution
    - ii. Determine if referral to special docket is warranted
- iii. In 2000, the Jail Collaborative was formed. It added other tools to use for possible diversion:
  - a. Social Services
  - b. Health Care
  - c. Job Training

## III. MAJOR CRIMES

- Beginning in 2005, certified major crimes required collaboration and approval before criminal complaints and warrants could be filed. The first five (5) areas follow as Attachment 2.
- In addition to the crimes already identified, additional crimes within the City of Pittsburgh and the McKeesport Warrant Office also require collaboration and approval before charging. The crimes follow as attachment 3.
- The municipalities required to work through the McKeesport Warrant Office follow as Attachment 4.
- The Warrant Office concept was again expanded, and effective in September of 2019, a third Warrant Office will exist to require the remaining municipalities in the eastern part of the County to undergo the same collaboration before charging. The municipalities required to participate follow as Attachment 5.



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## OFFICE OF THE DISTRICT ATTORNEY

303 COURTHOUSE  
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PHONE (412) 350-4400 • FAX (412) 350-4414

August 16, 2018

The Honorable Thomas G. Saylor  
Chief Justice, Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue  
P.O. Box 61260  
Suite 1500  
Harrisburg, PA 17106

### RE: Rules Related to Setting of Bail

Dear Chief Justice Saylor,

I am writing to ask the Court to consider an amendment of the Rules of Criminal Procedure related to the setting of bail.

Our experiences have shown that the setting of monetary bail for defendants who are charged with relatively minor crimes and who do not pose a danger to another person or to the community often results in unnecessary, unfair, and costly pretrial detention of indigent defendants.

It is recommended that the current rules on the setting of bail be re-examined and ultimately amended to avoid such results. Such amendments should include the following provisions:

- Requiring the development and implementation of an unbiased and validated risk assessment tool, which at the very least, documents the considerations of Rule 523(A), to be employed by issuing authorities and judges in making decisions related to pretrial detention.
- Mandating legal representation of indigent defendants at preliminary arraignments and at any subsequent hearings where bail determinations are to be made; and mandating that the risk assessment considerations be provided to the legal representative and the District Attorney.
- Mandating the imposition of non-monetary bail – with or without conditions – when the risk assessment tool and any other information presented indicates that there is a high likelihood that the defendant will appear as required and will not represent a significant danger to another person or to the community if the defendant is released.

The Honorable Thomas G. Saylor

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- Permitting the imposition of monetary bail – with or without conditions – or the denial of bail only when the risk assessment tool and any other information presented, including the financial ability of the defendant, indicates that there is a high likelihood that the defendant will not appear as required and/or will represent a significant danger to another person or to the community if the defendant is released.

This approach to the setting of bail has been in place in Allegheny County for the past 12 years. This approach has resulted in a significant reduction of instances of the defendants failing to appear in court as required while, at the same time, it has appropriately ensured the protection of the peace and dignity of the citizens of the County.

Another benefit of this approach is the fact that defendants' treatment needs are being addressed and satisfied at the earliest possible point in the court process as a result of the imposition of thoughtful and necessary bail conditions.

I thank you for your anticipated consideration.

Very truly yours,



Stephen A. Zappala, Jr.  
District Attorney

cc: The Honorable Jeffrey A. Manning, Allegheny County President Judge  
Brian W. Perry, Criminal Procedure Rules Committee Chair



THE SUPREME COURT OF PENNSYLVANIA

FULTON BUILDING  
16TH FLOOR  
200 NORTH THIRD STREET  
HARRISBURG, PA 17101

THOMAS G. SAYLOR  
CHIEF JUSTICE

(717) 772-1599

August 27, 2018

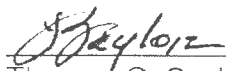
Stephen A. Zappala, Jr., Esquire  
District Attorney  
Allegheny County Office of the District Attorney  
303 Courthouse  
Pittsburgh, PA 15219-2489

Dear District Attorney Zappala,

In re: Rules Related to Setting of Bail

In response to your letter dated August 16, 2018, your recommendations regarding criminal procedural rule amendments pertaining to bail fall into the area that is being examined by a joint pretrial practices work group established by the Court. That group is in receipt of your suggestions, and it plans to review and evaluate them closely.

Sincerely,

  
Thomas G. Saylor

cc: Justices  
Tom Darr  
Daniel Durst, Esquire